

INTELLIGENCE LEGISLATION

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CURRENT STATUS

The mood of Congress, and particularly the Intelligence Committees, has shifted dramatically, if not completely, since the heydays of the "Pike" and "Church" Committees. Indeed only one Church Committee legislative recommendation of a restrictive nature, the Foreign Intelligence Surveillance Act (FISA) has been passed into law (1978). The main Church Committee proposal for restrictive, punitive, legislative "charters" for the Intelligence Community was defeated this year in committee. In addition, a number of measures to strengthen U.S. intelligence were introduced in the 96th Congress. These include:

- The Congress amended the so-called Hughes-Ryan Amendment of 1974 which required CIA to brief up to eight committees of the Congress before funds could be expended for covert actions. The recent legislation limits notification to the two Intelligence Committees and provides for the President to delay or withhold notification in certain sensitive cases.
- Significant progress was made on legislation to provide criminal penalties for the unauthorized disclosure of information identifying "covert intelligence agents." The Intelligence Committees of both Houses and the House Judiciary Committee favorably reported carefully drafted bills (H.R. 5615 and S. 2216) which would effectively remedy the problem of "naming names" by Covert Action Information Bulletin and others. It would criminalize disclosure of agents' names by:
  - An employee who has access to them.
  - An employee without regular access who learns the names through his duties.

- Anyone who engaged in a pattern of activities intended to disclose the names of agents.
- The bill also directs the President to establish improved cover procedures and to ensure that all U.S. departments and agencies provide full assistance.
- Final passage in the Senate was prevented by a small coalition of Democrat Senators in the Senate Judiciary Committee. The problem will not exist in the next Congress and the Senate version (the Chafee bill) should pass handily.
- Significant progress on relief of certain time-consuming and expensive provisions of the Freedom of Information Act but passage was delayed until next Congress. The FOIA has adversely affected CIA and Community morale.
- Introduction of S. 2929, an Act to establish an Intelligence Community by ten Republican Senators (so-called "Republican Charters").
- The Act provides for a number of strong measures for strengthening the U.S. Intelligence Community by improving clandestine collection and competitive analysis. Includes certain proposals for functional and organizational improvements to the various agencies.

#### MAJOR ISSUES

- While executive actions and orders can go a long way toward rebuilding American intelligence, legislation may be needed to remove the possibility of doubt concerning the legality of Executive orders to authoritatively deny interpretations of law which have grown up in recent years and to fill gaps in existing law.


-- There are a number of issues which require immediate legislative action:

- No law now prohibits the unauthorized revelation and publication of names of intelligence personnel or agents.

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- The Freedom of Information Act is causing untold grief in both resources and morale for the intelligence agencies.
- There is insufficient authority to investigate leaks and punish leakers. *?* 
- The Foreign Intelligence Surveillance Act has proved to be not only cumbersome and of doubtful constitutionality. It has also led to abuses and has had a chilling effect on counterintelligence operations.
- Senior employees of the National Security Agency and the Defense Intelligence Agency are not yet covered by provisions similar to those which govern members of the Senior Executive Service in other agencies.

-- There are also a number of problems which may require legislation in order to improve or reallocate organizational functions. For example:

- Any proposal to allow employees of the DDO regular access to the FBI's data on Americans in the U.S. risks being termed a violation of the National Security Act of 1947.
- The DCI, by law, is forced to fill these roles that are scarcely compatible: chief Presidential advisor on intelligence, director

of the whole Community, and manager of one of its parts, which in itself has at least three diverse parts. This situation, which has led to many difficulties, can only be changed by law.

- The heads of the several intelligence agencies can be excessively subject to political influence. However, by law, each can be given a measure of independence by a fixed term of service, such as is now enjoyed by the Director of the FBI.
- Although legislation is probably not needed to establish the DDO as a separate clandestine service, such legislation would increase the DDO's status at a time when this would do much good.

#### RECOMMENDATIONS FOR LEGISLATIVE PROGRAM

- Several proposals should be introduced immediately in conjunction with the two intelligence committees:
  - Intelligence Identities Protection Act (Chafee Bill) - introduce immediately.
  - Freedom of Information Relief legislation - introduce immediately.
  - Protection of intelligence information - There is a need for legislation to broaden statutory authority for investigations by appropriate Executive Branch entities of unauthorized disclosures of intelligence information. Such legislation should provide sanctions for unauthorized disclosures.
  - Intelligence Personnel Protection Act - This is a proposal to provide criminal penalties for threats or actual acts of violence against officers or employees of the Intelligence Community or persons for whose security the Central Intelligence Agency or other entities of the Intelligence Community. The proposed amendment to Title 18 of the United States Code can be dealt with as separate legislation or in conjunction with further congressional consideration of an omnibus revision of the Criminal Code.

- Other minor legislative proposals on CIA legislative agenda.
- Repeal of Foreign Intelligence Surveillance Act (FISA) - repeal immediately.
- Introduction of proposals contained in S. 2929, as appropriate.
  - Introduce in conjunction with new Executive Orders, Presidential Directives, DCI Directives, Attorney General Guidelines.
- Additional issue with regard to legislation: There are several key positions within the government which would be critical in preparing new or amended legislation, Executive orders, and Attorney General guidelines:
  - General Counsel, CIA
  - Legislative Counsel, CIA
  - Counsel for Intelligence Policy, Department of Justice
  - Staff Director, Senate Select Committee on Intelligence
  - Staff Director, House Permanent Select Committee on Intelligence